

FTAA – COMMITTEE OF GOVERNMENT REPRESENTATIVES ON THE PARTICIPATION OF CIVIL SOCIETY

COVER SHEET

TO THE TRIPARTITE COMMITTEE
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1825 K Street NW, suite 1120, Washington, D.C. 2006 Estados Unidos

Name : Claudio Lara
Address: Las Hortensias 2371, Providencia, Santiago, Chile
Organization: Consumer's International - Chile
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Executive Summary

The official version does not mention the difference in services between the developed nations and the countries of Latin America, or the high concentration of trade and investment in services in the developed countries.

Latin America as a region is a net importer of services. Meanwhile, exports are controlled primarily by foreign capital, as are the most important investments in the sector.

The definition of services has changed over time, along with the fields to which it applies. Trade agreements must take account of these changes.

Chile's primary exports of services (banking, pension fund administration) present serious difficulties: high levels of concentration and foreign ownership, negative profit margins (pension funds) which demonstrate a high degree of inefficiency in management.

In the negotiations there is no mention of the difference between services as inputs to production, and services as products to meet the needs of consumers. The trade agreements seem to take into consideration only the first type of services.

Requirements and conditions:

- Place the same importance on services that are inputs, as on those which are aimed at consumers.
- Adopt a comprehensive and integrated approach to negotiations in this sector, incorporating topics such as investments, market access and intellectual property, and establishing protection mechanisms in these areas.
- Use competition policy to regulate services and prevent mergers, monopolization of services and anti-competitive practices by corporations.
- Place priority on quality and accessibility, rather than ownership of services. In the end, it will be impossible to liberalize trade in services without consumer protection laws.
- Include specific provisions that grant exemptions to less developed countries from their subsidy and "national treatment" obligations. A bottom-up levelling approach must be adopted if we are to ensure that the region's countries will be able to liberalize the service sector in a manner appropriate to their own style and rate of development.
- Give special treatment to services for small, micro and medium-sized enterprises
- Provide protection for intellectual property: services cannot be truly liberalized so long as monopolization of technology continues to exist.
- Implement a policy or strategy for national growth and development which protects small, medium and micro-

enterprises.

First, we should like to briefly comment on the matter of micro-, small and medium-sized enterprises. From the point of view of the consumer, the main concern is that the services provided by these enterprises be efficient and of good quality, and provided at a reasonable price. So that the size of the firm providing such service becomes secondary.

The same may be said with respect to the ownership of companies. To the consumer it matters little whether telecommunication services are provided by a Spanish or Chilean state-run or private firm. The important thing in these situations is to consider the criteria that one must take into account in order to ensure that the services are being provided in a manner that benefits the country's consumers. In this area there are two fundamental considerations:

- Regulations to ensure a truly efficient service of high quality and with the necessary continuity, safety, etc.
- A national development policy or strategy. In other words, to what extent are the interests of the consumer offset by the desire to protect – at least temporarily -- certain key sectors of the national economy, or a given size of company (e.g. small, medium-sized companies or microenterprises).

Here, one may well question to what point a free trade agreement can be independent of national development strategy. In truth, any agreement must be in accord with that strategy.

With regard to Chile's pension fund administrations, the companies in this sector cannot be evaluated without considering management performance. If these companies have been recording negative results in four of the past five years, it is because they have serious management problems, among other things. When one considers that the regulations governing this sector were tailored to these companies, then the problems they have encountered loom even larger.

With respect to the FTAA, we place great importance on its contributing to the search for solutions to the large gaps that exist within and between countries in the service sector, as well as an overall balance of rights and obligations in that sector. This is a matter of promoting the interests of all participants in order that the benefits produced will be mutual. However, as long as the lack of information indicated here, the countries cannot make a correct assessment of the costs and benefits involved. There is an urgent need, therefore, not only to overcome this lack of data but also to adopt a new approach to the negotiations.

This new approach must be comprehensive and integrated since the service sector overlaps with other topics including competition policy, foreign investment (a topic which is covered separately in this seminar), market access, regulatory frameworks, etc. For the negotiations to be truly effective, therefore, they must be based on a comprehensive vision of services.

Another aspect that we wish to discuss is that of new technologies. In recent years, the rapid advance of technology in the service sector has led to enormous expansion. This raises a question concerning the relationship between technology and competition policy, namely, to what point do the various mechanisms for protection of intellectual property rights actually hinder open competition in access to technologies?

In its discussions and negotiating process, the FTAA should examine this question with a view to putting an end to this anti-competitive policy inherent in intellectual property protection.

As well, the FTAA once and for all eliminate the bias shown by the GATS in the treatment it gives to capital, on the one hand, and that received by the work force, on the other hand. That agreement allows unrestricted movement of capital for the provision of services, yet does not grant the same right to workers. The FTAA negotiations should reduce the current disparity in this treatment.

(Presentation based on the FTAA and Citizenship Seminar organized by the Alianza Chilena por un Comercio Justo y Responsable (ACJR), under the auspices of the Ministry of External Relations of the Republic of Chile)